IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1970

No.

WILLIE JAMES McGEE,

Petitioner.

v.

STATE OF CALIFORNIA, and
PETER A CHANG, JR., as District Attorney
For SANTA CRUZ COUNTY, STATE OF CALIFORNIA,
and THOMAS C. LYNCH, as Attorney General for
the STATE OF CALIFORNIA.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE DIVISION OF THE SUPERIOR COURT FOR THE COUNTY OF SANTA CRUZ STATE OF CALIFORNIA

Charles W. Hayden
200 Third Street
Los Altos, California

October 14, 1970

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PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE DIVISION OF THE SUPERIOR COURT FOR THE COUNTY OF SANTA CRUZ STATE OF CALIFORNIA

The petitioner, WILLIE JAMES McGEE, prays that a Writ of Certiorari issue to review the judgment of the Municipal Court for the Santa Cruz Judicial District, County of Santa Cruz, State of California, rendered in these proceedings on October 8, 1969.

OPINIONS BELOW

The opinion of the trial court and of the Appellate Division of the Superior Court for the County of Santa Cruz, State of California, are both unreported. Both are reflected in the certified record filed herewith.

JURISDICTION

The order or judgment of the Appellate Division of the Superior Court for the County of Santa Cruz, State of California, was entered July 24, 1970. (See Appendix A.) This petition for certiorari was filed less than 90 days from the date aforesaid. The jurisdiction of this Court is invoked under 28 USC § 1257 (3).

QUESTIONS PRESENTED

Petitioner was convicted of violating Section 148 of the Penal Code for the State of California, said Section reads

"Every person who willfully resists, delays, or obstructs any public officer, in the discharge or attempt to discharge any duty of his office, when no other punishment is prescribed, is punishable by a

fine not exceeding one thousand dollars, or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment."

Following said conviction, petitioner appealed said conviction to the Appellate Division of the Superior Court for the County of Santa Cruz, State of California. Said appeal affirmed the finding of guilty.

Within the time limit set by California Rule of Court 63 (b), petitioner sought to have said matter certified to the District Court of Appeals, State of California, for further appeal.

Said Rule 63 (a) permits a Superior Court discretion to permit or deny a person convicted of a misdemeanor to appeal said conviction.

"(a) the Superior Court on application of a party, or on its own motion, may certify that a transfer of a case to the District Court of Appeal appears necessary..." Rule 31 of the Rules of Court for the State of California gives an automatic right of appeal in any felony proceeding (Superior Court) (See Appendix E), while Rule 1 of the Rules of Court for

the State of California gives an automatic right of appeal in any Superior Court civil proceeding (See Appendix E).

The questions thereby arising are:

1. Whether Section 148 of the Penal Code of the State of California is consistent with the Due Process Clause of the Fourteenth Amendment.

2. Whether Rule of Court 63 of the Appellate Rules of Court for the State of California is consistent with the Equal Protection Clause of the Fourteenth Amendment.

CONSTITUTIONAL PROVISIONS, STATUTES and RULES OF COURT INVOLVED

Constitution of the United States, Amendment XIV, Section 1:

"...nor shall any state deprive any person of life, liberty or property, without due process of law ..."

Constitution of the United States, Amendment XIV, Section 1:

"...nor shall any state...deny to any person within its jurisdiction the equal protection of the laws."

Section 148, Penal Code of the State of California:

"Every person who willfully resists, delays, or obstructs any public officer, in the discharge or attempt to discharge any duty of his office, when no other punishment is prescribed, is punishable by a fine not exceeding one thousand dollars, or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment."

Rule 63, Rules of Court, Appellate Procedure, State of California:

" (a) [Authority to make] The superior court on application of a party or on its own motion may certify that the transfer of a case to the District Court of Appeal appears necessary to secure uniformity of decision or to settle important questions of law. Such certification may be made by a majority of the judges of the appellate department or, in a county having no appellate department, by the judge hearing the appeal. When there was a trial in the superior court, the judge who tried the case may make such certification. If any judge of the appellate department who participated in the decision is unable to act on the certification, then a judge designated or assigned to the appellate department by the chairman of the Judicial Council may act in his place. If the judge who heard the appeal or tried the case is unable to act, then the certification may be made by a judge designated by the presiding judge or, if there be no presiding judge, by any judge of the Court.

(b) [Application for certification] Any party may apply to the superior court for the certification of a case after judgment in that court. If there was no trial in the superior court such application shall be served and filed before the judgment on

appeal becomes final as to that court and may be included in any petition for rehearing. If there was a trial in the superior court the application shall be served and filed at least 10 days before expiration of the time for certification. Any other party may serve and file an opposition within five days after the filing of the application. No hearing shall be held on the application and the failure of the court to certify the case shall be deemed a denial of the application.

(c) [Time] The certification of a case in which there is no trial in the superior court shall be filed with the clerk of that court at any time after the record on appeal and the briefs, if any, are filed in the superior court and not later than 10 days after the judgment on appeal becomes final as to that court. The certification of a case in which there was a trial in the superior court shall be filed within 30 days after entry of the judgment or 15 days after service of written notice of entry of the judgment, whichever is earlier, in a civil case, or within 15 days after rendition of the judgment in a criminal case, unless the time is extended as provided in subdivision (d) of this rule.

(d) [Extention of time] The time for filing the certification of a case shall be extended by new trial proceedings or proceedings to vacate a judgment in the same manner, to the same extent, and for the same period as the time for filing notice of appeal is extended by such proceedings pursuant to rule 3 of the Rules on Appeal.

(e) [Contents] The certification shall contain a brief statement setting forth any conflict of decision (with citation of or reference to decisions creating the conflict, if there is no

written opinion by the superior court) or important question of law to be settled and shall state whether there was a judgment in the superior court, and, if so, the nature and the date thereof.

(f) [Transmission] Upon the filing of the certification the clerk of the superior court shall forthwith transmit a certified copy thereof to the clerk of the District Court of Appeal and shall mail notice of such certification to each of the parties and also to the Attorney General in a criminal case. Added, effective Jan. 2, 1961."

STATEMENT OF FACTS

On or about August 8, 1969, petitioner was acting in the capacity of a chaperone-counsellor to a group of black students, who, following the completion of summer school went on a chartered bus to the Boardwalk area of the Santa Cruz beach. Petitioner was and is a Student Body leader at Foothill College in Los Altos, California, and through his work there had been an instructor in a high school remedial summer program. In this capacity he was responsible for the group at Santa Cruz on or about August 8, 1969.

On or about August 8, 1969, officer David W. Horlock, a reserve officer on the Santa Cruz Police

force, had occasion to observe a black male individual on the Santa Cruz beach, in the Boardwalk area, who had in his possession two bottles of Ripple wine. Having reason to believe that said black individual was a minor, officer Horlock approached for the purpose of examining said individual's identification. Said wine bottles were passed around the group of blacks and eventually wound up in the possession of one, Glen Walters, whom officer Horlock arrested for illegal possession of alcohol, along with on other youth.

To avoid what the officers believed to be a possible confrontation with the large group of blacks, the officers, with their prisoners, retreated into a nearby garage and closed the door behind them. The officers radioed for assistance, and waited in the garage with their prisoners for such assistance to arrive. Meanwhile, the crowd of blacks outside had grown, and were making their presence known to the officers by persistent shouting and occasional pounding on the garage door.

After reinforcements had arrived from the police department, and as the officers were emerging from the garage with their prisoners, petitioner, WILLIE JAMES McGEE, appeared at the door and attempted to ascertain what was transpiring. Petitioner approached officer Horlock, identified himself, and inquired of said officer as to the reasons why the two prisoners were in custody (both prisoners were members of the group which petitioner was chaperoning.) Because of the noise and commotion, officer Horlock was unable to hear Petitioner. In a further attempt to gain officer Horlock's attention, petitioner placed both hands upon the chest of officer Horlock (the amount of force involved was disputed, but the trial court apparently found that contact was made); Petitioner was immediately arrested.

Following a court trial, WILLIE JAMES McGEE was found guilty of violating California Penal Code Section 148 and was sentenced to ninety (90) days in the county jail. An appeal was taken to the Appellate Division of the Superior Court of the County of Santa

Cruz, State of California.

The appeal was based upon the vagueness of the interpretation of "intent to delay, obstruct or resist" and upon the prosecution's failure to prove that the petitioner intended to "delay or obstruct" a public officer.

The appeal affirmed the trial court, and petitioner sought to have the Superior Court of Santa Cruz County, State of California, certify the proceedings to the District Court of Appeals for review of said Penal Code Section 148. Certification was denied on August 11, 1970, said certification being discretionary in misdemeanor criminal proceedings, as opposed to being a matter of rights in Superior Court proceedings, civil and criminal.

Petitioner obtained a further stay of execution of his ninety (90) day jail sentence to file this request for certiorari.

REASONS FOR GRANTING THE WRIT

1. The decision below directly conflicts with the due process principles set forth in State v Fleming

Company (1959), 339 P 212, the court held: "It must be evident that a criminal statute which neither requires a criminal intent in doing the prescribed act or defines with exactness the act forbidden, and further, is indefinite as to exceptions for liability, must be considered to deny due process to one against whom the statute is asserted." (at page 18)

In the Fleming case, the violation in question was that of setting milk prices below a figure which was not definite or fixed, but rather, depended upon many variables. This left the violation up to chance, with no intent required on the part of the "violating" party.

The U.S. Court of Appeals in U.S.A. v Vuitch, 305 Fed Supp 1032 (1969) in a matter presently before your Court, relating to abortion laws struck down a statute which placed the burden of proof upon the defendant to prove he or she had properly interpreted phrases such as "health" properly.

That Court held "the jury's acceptance or non-acceptance of an individual doctor's interpretation of the ambivalent and uncertain word "health" should not

determine whether he stands convicted of a felony, facing ten years imprisonment." (at page 1034).

The statute therein determined to be unconstitutionally vague read as follows:

> "Whoever produces an abortion on any woman, unless the same were done as necessary for the preservation of the mother's life or health, and under the direction of a competent licensed practioner of medicine shall be imprisoned."

The Court went on to say:

> "the word 'health' is not defined, and, in fact, remains so vague in its interpretation...that there is no indication whether it includes varying degrees of mental as well as physical health."

The case herein presented arises from a conviction of a criminal statute which prescribes conduct which "resists, delays, or obstructs any public officer..." in discharging"...any duty of his office...", without further exactness or definition or requirement. Violation of said Section is punishable by fine (up to $1,000.00) and/or jail (up to one year county jail.)

The trial court took the position that the requisite intent is found in doing an act which, in fact, "delayed" an officer, rather than requiring a finding that the

petitioner did the act with the intent to delay an officer.

Such a position places any citizen who impedes an officer's progress for whatever sound reason or question, in jeopardy. Further, such a position is far too vague for fair and impartial consideration in that a "delay" or "obstruction" to one public officer at one time may or may not be a "delay" or "obstruction" to another; and thus the enforcement of such a statute becomes arbitrary in enforcement and dangerously difficult to defend against.

To require the State to set forth prescribed acts is not oppressive at all.

2. The Rules of Court for Appellate procedure are such that they effectively deny petitioner the equal protection of the laws of the State of California.

Rule 1 of the Rules of Court, Appellate, for the State of California, permits a civil litigant the right to appeal to the District Court of Appeals for the State of California any civil judgment rendered at the Superior Court level. Generally, such suits are in

excess of $5,000.00 value, involves status or real property.

Rule 31 of said Rules freely permits appeals to be taken from any felony criminal conviction in the Superior Court without securing "permission" from said court.

Rule 63 of said Rules of Court requires "certification" i.e., "permission" from the local Superior Court before a misdemeanor conviction can be appealed to the State District Court of Appeals.

Petitioner submits that the above Rule 63 denies to petitioner the right to effectively place his position properly at the State Appellate level unless the local Superior Court concurs (which it did not in this case).

The initial reason for said difference in appellate procedures seems to be that civil and criminal cases are in different classes, and that felonies, which are generally more serious offenses and hence, generally more severe in their sentences, should be accorded full appellate hearings, whereas, generally misdemeanors are less serious and hence, less severe in

in sentence.

Such is not so in this case. Petitioner has been sentenced by a local court which petitioner claims wrongly interpreted a statute which in itself, is vague and constitutionally invalid. Said errors were wrongfully carried on by the local Superior Court.

Petitioner, as a result of Rule 63, has no further channels in appellate hearings than to have these matters determined by the Supreme Court of the United States.

CONCLUSION

For all of the above stated reasons, a writ of certiorari should issue to review the constitutionality of Section 148 of the Penal Code of the State of California and to review the constitutionality of Rule 63 of the Rules of Court for Appellate procedure of the State of California.

Respectfully submitted,

Charles W. Hayden
Attorney at Law
200 Third Street
Los Altos, California 94022
Telephone: (415) 948-0444

APPENDIX A

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CRUZ

APPELLATE DIVISION

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent	)	No. 33
vs.	)	OPINION
WILLIE JAMES McGEE, Defendant and Appellant	)	

PER CURIAM

Judgment is affirmed.

Dated: July 24, 1970

CHARLES S. FRANICH, Judge

NICK J. PROBAC, Judge

GILBERT B. PERRY, Judge

APPENDIX B

MUNICIPAL COURT OF THE SANTA CRUZ COUNTY JUDICIAL DISTRICT, STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

WILLIE J. McGEE,

Defendant.

Excerpt from Docket Sheet (#20839)

" 10-8-69 COURT TRIAL: HON. HARRY F. BRAUER presiding. Harry Smith, reporter. Defendant present with Counsel Hayden. Dist. Atty. William Kelsay. David Horlock and Howard J. Wetzel sworn and examined behalf The People and cross-examined by Charles Hayden, counsel for defendant. Defendant sworn, examined and cross-examined. Warnell Coats sworn, examined and cross-examined. The Court finds the defendant Guilty as charged. Cause continued to November 12, 1969 at 2:00 P.M. for pre-sentence report and imposition of sentence."

APPENDIX C

REQUEST FOR CERTIFICATION

IN THE MUNICIPAL COURT, SANTA CRUZ JUDICIAL DISTRICT IN AND FOR THE COUNTY OF SANTA CRUZ

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. WILLIE JAMES McGEE, Defendant.	No. 33 PETITION FOR REHEARING AND APPLICATION FOR CERTIFICATION

On appeal from the Municipal Court, Santa Cruz Judicial District, Honorable Harry F. Brauer, Judge.

Pursuant to Rules 63 and 107 of the California Rules of Court, appellant petitions the Court for a rehearing or, in the alternative, for a certification of this case to the Court of Appeal to settle important questions of law and public policy.

Charles W. Hayden
Attorney for Defendant-
Appellant

APPENDIX D

DENIAL OF REQUEST FOR CERTIFICATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CRUZ

APPELLATE DIVISION

THE PEOPLE OF THE STATE OF CALIFORNIA,	)	No. 33
Plaintiff and Respondent	)	ORDER
vs.	)	
WILLIE JAMES McGEE,	)	
Defendant and Appellant	)	

Petition for Rehearing and Application for Certification filed herein on July 31, 1970 are Ordered denied.

Dated: August 11, 1970.

GILBERT B. PERRY, Judge

NICK DROBAC, Judge

APPENDIX E

1. UNITED STATES CONSTITUTION

Fourteenth Amendment, Section 1

"Citizens of United States; states prohibited from abridging privileges or immunities of citizens of the United States, or depriving any person of due process of law or equal protection of the laws."

2. STATE OF CALIFORNIA
PENAL CODE SECTION 148

"Every person who willfully resists, delays, or obstructs any public officer, in the discharge or attempt to discharge any duty of his office, when no other punishment is prescribed, is punishable by a fine not exceeding one thousand dollars, or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment."

3. STATE OF CALIFORNIA
RULES OF COURT - APPELLATE PROCEDURE

A. RULE 1 (a)

"[Form of notice] An appeal from a judgment of a superior court or from a particular part thereof is taken by filing with the clerk of that court a notice of appeal therefrom. The notice shall be signed by the appellant or by his attorney and shall be sufficient if it states in substance that the appellant appeals from a specified judgment or a particular part thereof. A notice of appeal shall be liberally construed in favor of its sufficiency."

B. RULE 31 (a)

"[Time of filing] In the cases provided by law, an appeal is taken by filing a written notice of appeal with the clerk of the superior court within 10 days after the rendition of the judgment or the making of the order, except that an appeal from an order denying a motion for a new trial in cases where the defendant is committed before final judgment for sexual psychopathy, insanity, or narcotics addiction may be taken within 10 days after the making of such order or the defendant's commitment, whichever is later. A notice of appeal filed prior to the time prescribed therefor is premature but may, in the discretion of the reviewing court for good cause, be treated as filed immediately after the rendition of the judgment or the making of the order."

C. RULE 63 (a) (Municipal Criminal Appeal)

"[Authority to make] The superior court on application of a party or on its own motion may certify that the transfer of a case to the District Court of Appeal appears necessary to secure uniformity of decision or to settle important questions of law. Such certification may be made by a majority of the judges of the appellate department or, in a county having no appellate department, by the judge hearing the appeal. When there was a trial in the superior court, the judge who tried the case may make such certification. If any judge of the appellate department who participated in the decision is unable to act on the certification, then a judge designated or assigned to the appellate department by the chairman of the Judicial Council may act in his place. If the judge who heard the appeal or tried the case is unable to act, then the certification may be made by a judge

designated by the presiding judge or, if there be no presiding judge, by any judge of the court."